
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 59(2) and 59(3) of the Higher Education (Wales) Act 2015 (“the Act”). It is the first commencement order to be made under the Act.

Article 2 brings into force certain provisions of the Act but only for the purpose of making regulations. Those provisions will come into force on the day after the day on which this Order is made.

Article 3 brings certain provisions of the Act into force for certain purposes on 25 May 2015. These provisions are in Part 2 (fee and access plans), Part 4 (financial affairs of regulated institutions) and Part 7 (supplementary provision about functions of HEFCW) of the Act. The provisions in Part 4 of the Act include HEFCW’s function of preparing a code relating to the organisation and management of the financial affairs of regulated institutions (section 27(1)). Provisions of the code may take the form of requirements or guidance (section 27(3)). The provisions in Part 7 of the Act include sections 47 to 49. Section 47(1)(a) provides that any requirement that HEFCW may impose under the Act on the governing bodies of institutions cannot require those bodies to act in breach of their obligations as charity trustees. Section 47(1)(b) provides that HEFCW cannot require governing bodies of institutions to do anything that is incompatible with their governing documents. Section 48 imposes a duty on HEFCW to take into account, in exercising their functions by virtue of the Act, the importance of protecting academic freedom. Under section 49 of the Act, HEFCW must, in exercising their functions by virtue of the Act, take into account any guidance issued by the Welsh Ministers. The provisions in Part 7 of the Act which also come into force on 25 May 2015 include HEFCW’s function of preparing a statement in respect of their intervention functions (section 52(1)) and their function in section 54(3) and 54(4) of providing information and advice about, amongst other things, the regulatory framework established by the Act and the roles and responsibilities of regulated institutions.

Article 4 brings Part 2 of the Schedule to the Act (transitional provision) fully into force on 1 August 2015. As such, the transitional period described in Part 2 of the Schedule begins on that date and ends on 31 August 2017 (paragraph 29(2) of the Schedule). A plan that has been approved by HEFCW under section 34 of the Higher Education Act 2004 (“the 2004 Act”) before 1 August 2015 and which falls within paragraph 27 of the Schedule to the Act will be treated, during the transitional period, as a fee and access plan approved under section 7 of the Act. The purposes for which those plans will be treated as approved under section 7 of the Act are limited and the provisions listed in paragraph 28 of Part 2 of the Schedule to the Act refer. Those provisions concern compliance with the applicable fee limit (sections 10 to 12, 14, 15(1)(a) and 16 of the Act) and the assessment of quality of education (sections 17 to 23 of the Act). Those plans will also be treated as plans approved under section 7 of the Act for the purposes of HEFCW special reports (section 51(1)(e)) and for consultation and good practice, information and advice purposes (sections 24(2)(a), 28(2), 52(3) and 54(1) of the Act). Part 2 of the Act comes into force on 1 August 2015 because some students who attend or undertake courses of higher education at institutions in Wales might be required by those institutions to start attending or undertaking their courses during August and continue on those courses during the following autumn. (For the purposes of payments of statutory student support, such courses are treated as starting on 1 September in the relevant calendar year).

Only certain provisions of the regulatory framework established by the Act will have effect during the transitional period. Article 5 brings those provisions into force on 1 September 2015. Provisions relating to institutions’ compliance with the applicable fee limit are brought fully into force (sections

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

10 to 12, 14 and 15(1)(a) and 16), as are provisions concerning the assessment of quality of education (sections 17 to 25). Article 5 also brings into force other provisions relating to the warning notice and review procedure (sections 41(1)(b), 41(1)(d), 41(2) and sections 42 to 44). From 1 September 2015, the warning notice and review procedure will apply in relation to any directions given by HEFCW under sections 11 or 19 of the Act. Additionally, article 5 brings into force, on 1 September 2015, provisions relating to the production of special reports by HEFCW (sections 51(1)(a), 51(1)(e) and 51(2)) and the publication of a statement in respect of HEFCW's intervention functions under sections 11, 19 and 20(1) and 20(2). As article 5 brings certain provisions in Parts 2 and 3 of the Act into force, it also brings into force a number of related minor and consequential amendments set out in Part 1 of the Schedule to the Act. These include amendments to section 70 of the Further and Higher Education Act 1992 which limit the application of that section to the Higher Education Council for England. Amendments to Part 3 of the Higher Education Act 2004 are also brought into force which limit that Part's application to English approved plans and which remove HEFCW's functions as relevant authority under that Act.

Article 6 brings sections 2, 4, 5, 6 and 7 of the Act fully into force on 1 January 2016. These provisions fall within Part 2 of the Act (fee and access plans) and relate to applications that institutions may make to HEFCW for approval of proposed fee and access plans. Article 6 also brings section 41(1)(a) into force on 1 January 2016. From that date, the warning notice and review procedure in sections 42 to 44 of the Act will apply to any notices issued by HEFCW under section 7(1)(b) of the Act.

Articles 7 and 8 make saving provision in relation to certain provisions of the 2004 Act and certain regulations made under that Act. Article 7 ensures that from 1 September 2015 an institution remains able to apply to HEFCW for a variation of a 2004 Act plan (defined in paragraph 29(3) of the Schedule to the Act), which is treated as approved under section 7 of the Act during the transitional period, in accordance with the Student Fees (Approved Plans) (Wales) Regulations 2011 ("the 2011 Regulations"). Article 8 ensures that an institution which has applied to HEFCW for approval of a proposed plan under section 34 of the 2004 Act prior to 1 September 2015 remains able to apply for a review in relation to that application after that date in accordance with the 2011 Regulations.